Supreme Court of the United States.

No. 7
(ORIGINAL.)

EX PARTE ORANGE FULLER, ASSIGNEE OF MANNY G. BUTLER AND ROBERT E. BUTLER, COMPOSING THE FIRM OF BUTLER BROTHERS, PETITIONER.

MOTION FOR LEAVE TO FILE PETITION FOR WRIT OF MANDAMUS, AND PETITION FOR WRIT OF MANDAMUS.

RICHARD D. SHEPARD,
HARRISON O. SHEPARD,
Attorneys for Petitioner.

IN THE SUPREME COURT OF THE UNITED STATES.

Ex Parte ORANGE FULLER, ASSIGNEE OF MANNY G. BUTLER AND ROBERT E. BUTLER, COMPOSING THE FIRM OF BUTLER BROTHERS, Petitioner. | No. ..... ORIGINAL.

Now comes Orange Fuller, assignee of Manny G. Butler and Robert E. Butler, composing the firm of Butler Brothers, petitioner, in the above entitled cause, by Richard B. Shepard and Harrison O. Shepard, his attorneys, and moves the court for leave to file his application for a writ of mandamus against the Honorable W. H. H. Clayton, as judge of the United States Court in the Indian Territory, Central District, to compel said judge to execute the mandate of this honorable court, issued in cause numbered 16,236, wherein The Missouri, Kansas and Texas Railway Company was plaintiff in error, and your petitioner was defendant in error, and to set aside an order made on the fifteenth day of January, A. D. 1900, granting a new trial in said cause in the said United States Court in the Indian Territory, Central District.

RICHARD B. SHEPARD,
HARRISON O. SHEPARD,
Attorneys for Petitioner.

IN THE SUPREME COURT OF THE UNITED STATES.

Ex parte ORANGE FULLER, ASSIGNEE OF MANNY G. BUTLER AND ROBERT E. BUTLER, COMPOSING THE FIRM OF BUTLER BROTHERS, Petitioner. | No. ..... ORIGINAL.

To the Honorable, the Chief Justice and Associated Justices of the Supreme Court of the United States:

Comes now Orange Fuller, assignee of Manny G. Butler and Robert E. Butler, composing the firm of Butler Brothers, a citizen of the United States, and residing in the Indian Territory, and gives this honorable court to understand and be informed:

That Whereas, on the twenty-third day of January, A. D. 1892, your petitioner filed in the office of the clerk of the United States Court in the Indian Territory at Muscogee, his complaint at law duly verified, against The Missouri, Kansas and Texas Railway Company, to recover the sum of seventeen thousand and seventy-nine and 34-100 ($17,079.34) dollars as damages, and caused summons to issue thereon, which was duly served, to which complaint at law defendant answered.

And Whereas, about the first day of May, A. D. 1894, the venue in said cause was legally and properly changed from the First Judicial Division (now the Northern District), to the Second Judicial Division (now the Central District), of the Indian Territory.

And Whereas, on the second day of February, A. D. 1895, upon trial and verdict by jury, judgment was entered in favor of your petitioner, and against the Missouri, Kansas and Texas Railway Company, for the sum of eight thousand five hundred ($8,500.00) dollars.

And Whereas, on the first day of March, A. D. 1895, said The Missouri, Kansas and Texas Railway Company filed its petition for writ of error and superseadeas bond, which were respectively allowed and approved, and the said cause duly filed and docketed in the office of the United States Circuit Court of Appeals for the Eighth Circuit, on the third day of April, A. D. 1895, on appeal from said United States Court in the Indian Territory, Second Judicial Division (now Central District).

And Whereas, on the thirtieth day of December, A. D. 1895, an opinion of said United States Court of Appeals was filed in said cause, affirming the judgment of the said United States Court in the Indian Territory and judgment accordingly entered.

And Whereas, on the fifth day of March, A. D. 1896, said The Missouri, Kansas and Texas Railway Company filed in the office of said United States Circuit Court of Appeals, its assign-

ments of error, petition for writ of error, superseadeas bond and writ of error, said petition for writ of error, and supersedeas bond having been respectively duly allowed and approved, and said cause was duly filed and docketed and numbered 16,236 in this honorable court on the 20th day of March, A. D. 1896.

And Whereas, on the third day of January, A. D. 1898, the said judgment of the United States Circuit Court of Appeals for the Eighth Circuit and the United States Court in the Indian Territory, Second Judicial Division (now Central District), was affirmed by this honorable court and the cause remanded to the United States Court in the Indian Territory.

And Whereas, in accordance with said judgment, on or about the third day of March, A. D. 1898, there was issued out of the office of the clerk of this honorable court its mandate, which was on the twenty-second day of July, A. D. 1898, duly filed and spread upon the records of the United States Court in the Indian Territory, Central District.

And Whereas, on the twentieth day of April, A. D. 1896, and subsequent to the filing and docketing of said cause, and while said cause was pending in the Supreme Court of the United States on appeal, as aforesaid alleged, said The Missouri, Kansas and Texas Railway Company filed in the United States Court in the Indian Territory, Central District, its petition for a new trial or rehearing for newly discovered evidence; and that summons was issued against your petitioner to answer on the first day of the next term of said court, on to-wit: about the first day of September, A. D. 1896. On that date your petitioner objected in writing to the consideration of said petition, on the grounds that said court was without jurisdiction or authority in the premises; that the issues sought to be made by said evidence were not properly before it, and that the proceedings were and had been irregular and not according to law. The said The Missouri, Kansas and Texas Railway Company afterwards filed amendments to its said petition, on the following dates, to-wit:

May 7, 1897. First amended petition for new trial filed.
August 13, 1897. Second amended petition for new trial filed.
September 21, 1897. Third amended petition for new trial filed.
May 20, 1898. Fourth amended petition for new trial filed.
June 27, 1898. Amendment to fourth amended petition for new trial filed.
August 30, 1898. Second amendment to fourth amended petition for new trial filed,

to which several amended petitions your petitioner filed objections in writing to the consideration of the same, as aforesaid.

And Whereas, the Honorable W. H. H. Clayton, as judge of the said United States Court in the Indian Territory, Central

which leave of this honorable court first had and obtained,

District, after a hearing upon said petition, amendments thereto and answer, on the fifteenth day of January, A. D. 1900, granted said petition and ordered a new trial in said cause, and accordingly entered the order of record in said court. That the Honorable W. H. H. Clayton was, at the time of the making of the order complained of, and now is the duly appointed, qualified and acting judge of said United States Court in the Indian Territory, Central District, aforesaid.

And Whereas, the said W. H. H. Clayton, judge as aforesaid, is preparing to and will proceed to re-hear said cause on its merits, under the order so made, granting a new trial, unless this honorable court commands him to execute the mandate of this honorable court, and set aside the order complained of made by him after receiving the mandate and inconsistent therewith.

And your petitioner further states that he is entirely without remedy in the premises, unless it is afforded by the interposition of this honorable court.

Wherefore, your petitioner prays that a writ of mandamus may be issued and directed to the Honorable W. H. H. Clayton, as judge of the said United States Court in the Indian Territory, Central District, commanding him to execute the mandate of this honorable court, and to set aside the order granting a new trial made on the fifteenth day of January, A. D. 1900, in said cause.

And as in duty bound your petitioner will ever pray.

ORANGE FULLER,
Petitioner.

RICHARD B. SHEPARD,
HARRISON O. SHEPARD,
Attorneys for Petitioner.

INDIAN TERRITORY,
CENTRAL DISTRICT. } ss.

Before me personally appeared Orange Fuller, the petitioner named in the foregoing petition, and being by me first sworn in due form of law, made oath and says that he has read the said petition, and that the matters and facts contained therein are true to the best of his knowledge, information and belief.

T. N. FOSTER,
Notary Public.

[Seal.]

My commission expires December 4, 1903.